Lumley, on account of embarrassments, shut up the theatre. He had previously let the boxes for a year or a season but leases of these were executed from a period which calculated with the date fixed for the termination of such leases, exceeded the period of one year, and he gave two *bona fide* creditors warrants of attorney on which they entered up judgments.

The lessor became acquainted with the existence of these judgments and with the mode in which leases of boxes had been granted. Lumley tendered money as rent. The lessor refused to receive it as rent but finally did accept it, though protesting that he took it not as rent under the lease but as compensation for the occupation of the premises merely and that he did not mean to waive, but expressly reserved the right of re-entry.

It was held by the House of Lords that this acceptance of the money, if there had been any forfeiture by breaches of covenant, was a waiver of such forfeiture.

In the present case the plaintiffs came to know in May, 1967, that the defendant had made a false declaration in his form of application for the purchase of the flat and yet not only did they continue to receive further purchase payments right up to November, 1971, but also granted a lease to the defendant in December, 1967, knowing that the defendant had made the false declaration. In my view the plaintiffs have waived their right to forfeit.

There is no substance in any of the other grounds put up by the defendant.

The claim of the plaintiffs is dismissed with costs.

Claim dismissed.

Solicitors: *Chan, Goh & David See; David Marshall.*

MALAYSIAN REPORTS

MING LIAN CORPORATION SDN. BHD. v. HAJI NOORDIN

[O.C.J. (Pawan Ahmad J.) October 21, 1972]

[Malacca — Civil Suit No. 22 of 1969]

Hire-purchase — Blank form of hire-purchase agreement signed by hirer — Form filled in after execution — No fraud or misrepresentation alleged — Whether valid — Evidence of terms outside written agreement — Evidence Act, 1950, s. 92(c).

In this case the owners by virtue of a hire-purchase agreement relating to a motor car applied to terminate the agreement and recover possession of the motor vehicle by reason of default by the hirer in payment of the sums due under the agreement. At the hearing the defence introduced evidence with the object of showing that the hire-purchase agreement was a fictitious document. The evidence showed that when the defendant signed the hire-purchase agreement certain portions of it were blank. The particulars were filled in after the agreement was signed. It was alleged that the hire-purchase agreement was in fact a bill of sale and as such void without registration.

Held: (1) as neither fraud nor misrepresentation was pleaded or proved, the hire-purchase agreement was valid, despite the fact there were blanks which were filled up after execution;

(2) in this case the defendant was aware of the terms of the hire-purchase and he knew that what he was signing was a binding contract of hire-purchase between him and the plaintiffs;

(3) the plaintiffs as owners were justified in terminating the agreement as the defendant had fallen into arrears of the instalments due.

Case referred to:-

(1) *Gallie* v. *Lee & Anor.* [1969] 1 All E.R. 1062.

CIVIL SUIT.

S. G. Thakurta for the plaintiffs.

D. A. Devadason for the defendant.

Pawan Ahmad J.: The basis of this action is a hire purchase agreement in respect of motor car No. MC 2460 entered into between the plaintiffs and the defendant on the 17th November 1967. The hire purchase price was $9,545.91 payable by an initial payment of $2,115.91, 29 payments of $247.35 and one final payment of $256.85. Clause 4 of the agreement empowers the owners to terminate the agreement and recover possession of the motor car in the event of default by the hirer of any sums due under the agreement.

By their statement of claim the plaintiffs claimed the following: —

(a) $767.31 for arrears of hire rent.

(b) $5,115.25 for depreciation etc.

(c) $175.38 for insurance premium

(d) $120.00 seizing fee.

(e) Interest.

(f) Costs.

At the commencement of the hearing counsel for the plaintiffs informed the court that he was abandoning the claim for $5,115.25 referred to in (b) above. So, for the purposes of the plaintiffs' claim, only paragraphs (a), (c), (d), (e) & (f) above are material for the present hearing.

In his defence the defendant admits the hire purchase agreement. He also admits having been in arrears of $767.31. However, he disputes the sum of $295.38 claimed by the plaintiffs as insurance premium and seizing fee.

Further, the defendant has counter-claimed and by way of such counter-claim asks for specific performance of the hire purchase agreement and an order that the plaintiffs deliver the vehicle to him or to pay him the sum of $9,545.91 being the "contract price" of the said vehicle. He also asks for compensation for having been deprived of the use of the vehicle from the date of seizure, *i.e.* 14th November, 1968 to the date of delivery of the vehicle to him.

In the reply and defence to counter-claim the plaintiffs join issue with the defendant upon his defence but deny that the defendant was entitled to specific performance or to any compensation.

The brief facts of the case for the plaintiffs are as follows: —

On 17th November, 1967 after a discussion between PW2, a clerk of the plaintiffs, and the defendant, upon the terms of the hire purchase having been mutually agreed between them, the defendant executed a hire purchase agreement (Exhibit P1). His signature was witnessed by PW2. The total hire purchase price, according to the agreement, was $9,545.91. The defendant paid $2,115.91 by way of initial payment and the balance was to have been paid by the defendant as stipulated in the statement of claim referred to above. The defendant fell into arrears and after giving notice of termination the plaintiffs repossessed the motor car on 17th November, 1968.

In the course of the hearing, counsel for the defendant sought to introduce evidence of terms outside the hire purchase agreement, but this was strenuously objected to by counsel for the plaintiffs. Counsel for the defendant submitted that as he was going to show that the hire purchase agreement was a fictitious document, he was entitled to introduce such evidence by reason of section 92(c) of the Evidence Act. Counsel for the plaintiffs, however, submitted that the defendant has not pleaded in his defence that the agreement was fictitious and further that the defendant was even relying on the agreement for the purposes of his counter-claim. For this reason he asked that the defence application to introduce extrinsic evidence on the agreement should be disallowed. At that stage of the proceedings it was clearly difficult for the court to foresee the nature of the evidence that would be led by the defendant to show that the agreement was fictitious and the court therefore exercised its discretion in favour of the defendant so as to give him a fair chance to introduce evidence to show that it was in fact fictitious. For this reason the court disallowed the objection of the plaintiffs and allowed the defendant to introduce extrinsic evidence on the agreement.

From the evidence of PW1, PW2 and the defendant himself, it is clear that when the defendant signed the hire purchase agreement on 17th November 1967 certain portions of it were blank. PW1 stated that the words typed into the agreement and the hand-written words, except for the hand-written attestation signatures including the rubber stamp to the attestation clause, were not then filled in. However, all the printed matter was in the agreement. He also stated that the typewritten matters subsequently entered in the hire purchase form had been previously agreed upon between the plaintiffs and the defendant before the agreement was signed. He further went on to state that it was normal practice for hire purchase companies to get the purchasers to sign the agreement in blank within this context. The reason for this being that in most cases the hirer would like to take the car quickly immediately after signing the agreement in blank within the context of what had been agreed to between him and the owners. He further clarified that if a hirer insisted upon filling all the blank spaces before signing the agreement, it would take two or three days before he could eventually take away the car.

This was confirmed by PW2, who stated that the terms of the hire purchase and the particulars etc., were agreed to between himself as the representative of the plaintiffs and the defendant, though it is true that these terms had not been filled in at the time the agreement was signed by the defendant.

At the conclusion of the case for the plaintiffs, counsel for the defendant made application for amendment of the defence and counter-claim but this was objected to by counsel for the plaintiffs. I disallowed the application for reason that it was much too late for the defendant to make such application. Moreover, it clearly would have put the plaintiffs at an unfair disadvantage if such application were allowed at that stage, especially after they had closed their case.

The defendant said in evidence that he needed $6,190 to purchase a new motor car after having traded in his old car for $2,115.91. He approached PW1 for a loan of $6,190 payable within a period of 30 months with interest. He stated that PW1 agreed to give such loan and as to the payments "I could make whenever and whatever amounts I could spare during the said period."

Counsel for the plaintiffs objected to evidence being given of any oral agreement between the parties but I over-ruled his objection in order to give the defendant a fair and ample opportunity to adduce evidence in support of his case.

The defendant further stated as follows: —

> "When I signed P1 it was a blank form but for the printed words. When I signed P1 I knew what it was about. I signed it even though it was in blank form because I was made to understand that it was a mere formality for the loan to go through.... I was never given a copy of the hire purchase agreement at any time."

He further went on to state that his agreement with the plaintiffs was that he would settle the full amount by April, 1970.

After receiving notice of termination of the agreement, the defendant went to see PW1 and told him that he would settle the balance due as soon as he received his gratuity, but subsequently he was informed by PW1 that the car had already been sold.

As the court has allowed extrinsic evidence to be given as to the hire purchase agreement, it is necessary to discuss the effect of such an agreement which is

signed by the hirer without the terms and particulars having been filled in at the time of its execution. Counsel for the parties submitted at great length on this point and their detailed submission is to be found in the record. Counsel for the defendant submitted that the hire purchase agreement was in fact a bill of sale within the meaning of the Bills of Sale Ordinance, 1950 and that by virtue of section 3 of that Ordinance it was void as having been unregistered. He also submitted that for the purposes of the hire purchase agreement the ingredients of offer and acceptance must be present but that in the present case there was no evidence of offer and acceptance. Counsel for the defendant also took the point that the agreement should be rejected as it was not properly stamped as required by the Stamp Ordinance.

Counsel for the plaintiffs referred to the case of *Gallie* v. *Lee & Anor.*[1] where it is laid down that "unless fraud or misrepresentation is pleaded and proved by the defendant, the defendant cannot come to court and say it was not an offer." In the present case neither fraud nor misrepresentation was pleaded or proved by the defendant and as such I agree with the submission of counsel for the plaintiffs. I also agree with the submission of counsel for the plaintiffs that the defendant, who is an educated person and a retired Government official of many years' standing, conversant with court procedure, knew what he was signing for and that he was fully aware of the particulars which would have been inserted in the spaces left blank at the time of signing. I cannot imagine that a person of the class of the defendant would have been irresponsible to the extent of signing a blank form without having known the terms and conditions of the agreement. He took away the car immediately after signing the blank form. There thus was offer and acceptance and it can be implied from this that he knew very well that what he was signing was a binding contract between him and the plaintiffs. I agree with the contention of counsel for the plaintiffs that there was very little difference between a bond and a contract, and that if a bond can be filled up after execution, so can a contract. Here it may be necessary to quote a passage from *Halsbury's* Laws of England, Third Edition, Volume 3, page 347, paragraph 660, Modes of Discharge, note (g):

"blanks may be filled up, even after execution, by consent of all the parties."

It might be necessary to state here that the defendant, far from pleading that the agreement was a bill of sale, went so far in his defence and counter-claim to refer to the agreement as being a hire purchase agreement. He admits this in paragraph 2, paragraph 3 and in almost every other paragraph of the statement the words "hire purchase agreement" are used. In paragraph 5 of the defence he even went further to state that "he would settle all arrears of instalments." Again in paragraph 6 he says "hire purchase instalments." What is worse, in paragraph 2 of the counter-claim he states that "the defendant is able and willing to pay the balance on the said agreement."

After having considered all the aspects of the matter including the pleadings, the evidence and the submission of counsel, I hold that Exhibit P1 is a hire purchase agreement and that as the defendant had fallen into arrears of the instalments due, the plaintiffs were quite rightly justified in terminating the agreement.

I find no merits in the defence contention that the agreement had not been properly stamped and I therefore over-rule the objection taken on this point.

As to the claim of $175.38 for insurance premium, it is clear that the defendant only used the car for fifteen days from the date of the renewal of the insurance policy. As such it will only be fair to make him pay the amount of premium in proportion to that. In view of this only a sum of $7.50 will be allowed in respect of insurance premium.

I agree that the taking of repossession of a motor car from a hirer is a somewhat unpleasant job and one which involves a certain amount of risk, but in the circumstances of the present case I do not consider that a charge of $120 for repossession is fair and reasonable. I therefore reduce this charge to $30.

In the event there will be judgment for the plaintiffs as follows: —

(a) $767.31 being arrears of hire rent.

(b) $7.50 being insurance premium for 15 days.

(c) $30 being seizing fee.

(d) Interest on the above sums at the rate of 12% per annum from 25th January, 1969 to date of payment.

(e) Costs to the plaintiffs on the magistrate's court scale.

The counter-claim of the defendant will be dismissed. I make no order as to the costs of the counter-claim.

Order accordingly.

Solicitors: *Allen Gledhill & Ball; D. A. Devadason.*

YEO SIOW YEE v. PUBLIC PROSECUTOR

[R.Cr.J. (Syed Othman J.) May 26, 1973]

[Kuantan — Criminal Revision No. 5 of 1972]

Criminal Law and Procedure — Money found on accused — Forfeiture — Disposal and compensation — Criminal Procedure Code (F.M.S. Cap. 6), ss. 406A, 407(ii), 412(i) and 426(i)(b) and Ch. XLI.

This was a petition by a prisoner for a revision *inter alia* of an order of forfeiture. The facts were that the petitioner had committed three offences of robbery of $5,000, attempted extortion and extortion of $100. On his plea of guilty to these offences he was convicted and sentenced to various terms of imprisonment. During the hearing of the robbery case, the prosecutor produced $8,190 found on the petitioner when he was arrested. The learned president ordered the money to be forfeited. While serving sentence the petitioner applied for this revision.

Held: (1) in this case justice was not served by the order forfeiting all the money to the government; the learned president should have considered first whether out of the amount recovered from the petitioner there was money regarding which the offence of robbery appeared to have been committed and then the manner of its disposal;

(2) the main power given to the court under section 407 of the Criminal Procedure Code is the power of disposal, and the power of forfeiture or confiscation is merely incidental;

(3) the learned president should have referred to section 412(i) which empowers the court to order property to be re-